(9)

No. 01-1229

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

PIERCE COUNTY,

Petitioner,

v.

IGNACIO GUILLEN as Legal Guardian for JENNIFER GUILLEN and ALMA GUILLEN, minors; and MARIANO GUILLEN, as Legal Guardian for PAULINA GUILLEN and FATIMA GJUILLEN,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Washington

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PETITIONER'S REPLY BRIEF

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INTRODUCTION

Respondents "Counter Statement" often actually is a "Statement Counter" to the record. For example, they claim that only in response to their public disclosure suit did petitioner "disclose[] all but five of the requested twenty documents," but they do not provide *any* supporting record citation because the record is otherwise. Br. In Opp. 1 n. 1. *See* CP 139-45, 76. Respondents even misstate the basic legal issue decided by the state supreme court and claim it held Congress could not constitutionally protect "data *collected and compiled* under *required state law*. . . ." Br. In Opp. 5 (emphasis added). However, there is no state law that required *Pierce County* to "*collect and compile*" the *State* Patrol or other accident reports involved here. *See* App. "K" at 4-5. Rather, even *Guillen* concedes the evidence established "counties are required to . . . collect data, reports and studies *so as to* determine whether a particular roadway is an appropriate candidate for *funding under 23 U.S.C. § 152*." *Guillen v. Pierce County*, 144 Wn.2d 696, 31 P.2d 628, 645 (2001) (emphasis added). From the beginning respondents have *expressly* sought accident history documents "used in the preparation" of such applications for federal "*safety construction improvement project[s]* . . . ." *Id.* at 633.

ANALYSIS

I. JURISDICTION EXISTS TO GRANT CERTIORARI

Respondents' jurisdictional arguments disregard that they brought *two* civil actions in state court. The first was an action for disclosure under Washington's Public Disclosure Act (hereinafter "PDA"). *See* 31 P.3d at 634. The second was a "separate tort action" in which a broader set of documents were sought in discovery. *Id.* at 634-35; App. "K." The Washington Supreme Court's decision on the section 409 privilege is final as to both cases.

The decision in the *Guillen* PDA case is ripe for review and will be dispositive of both that case and of the federal issue in the companion tort case. The *Guillen* court vacated the PDA trial court's ruling that all five of the controversial documents be produced and, at the same time, ordered the court to conduct further proceedings "not inconsistent with this opinion." 31 P.3d at 656. Given that the County's sole defense for withholding the documents, 23 U.S.C. § 409, has now been declared unconstitutional, the PDA trial court has no discretion but to order production of the four documents found unprivileged. The fifth document was found privileged below and that holding was not appealed. *See Guillen v. Pierce County*, 96 Wn.App. 862, 982 P.2d 123 (1999); 31 P.3d at 634 n.1. Hence, *Guillen*'s reference to "all of the disputed items" refers instead to the *Guillen* and consolidated *Whitmer tort* cases. *See* 31 P.3rd at 635-37. The four PDA documents are accident reports or lists of accident reports that the court has specifically identified as "raw data" subject to disclosure. 31 P.3d at 655. Even respondents assert all that is left is entry of a final judgment so that the County can pursue its appeal once more. Br. In Opp. 9. In fact, all that remains in the PDA case is for the trial court to decide the *amount* of attorneys fees already ordered by the supreme court to punish the County for having asserted the § 409 privilege. 31 P.3d at 655-56. Were production of the documents still in question the state court would not have ordered attorney's fees in the PDA case.

This Court, when interpreting finality, under 28 U.S.C. § 1257, will look not just at the technical posture of the case, but at the totality of circumstances; appealability is not limited to the "last order possible to be made in a case." R. Stern, E. Gress-Man, S. Shapiro & K. Geller, *Supreme Court Practice* §§ 3.3, 3.4 (7th ed. 1993), (*citing, Gillespie v. United States Steel Corp.* 379 U.S. 148, 152 (1964)). This case, where the vacation and remand cannot affect the ruling on the federal question, fits the first exception to the finality

rule set forth in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 479 (1975):

> [C]ases in which there are further proceedings–even entire trials—yet to occur in the state courts but for one reason or another the federal issue is preclusive or the outcome preordained. In these circumstances, because the case is for all practical circumstances concluded, the judgment of the state court on the federal issue is deemed final.

The *Guillen* PDA case therefore is ripe for review of the important federal question it presents.

Respondents however ignore the *Guillen* PDA appeal and argue the interlocutory review in the *tort action* and continued failure to produce documents precludes finality. Br. In Opp. 6. This argument overlooks that there has been no "interlocutory" appeal in the PDA case and suggests, without precedent, that a party invoking privilege in a tort case must produce the privileged documents before seeking review. Hence, under respondents' view this Court cannot review a state court order to produce materials protected by a federal privilege—whether it be § 409 or federal executive, military secrets or national security privileges—until litigation on the merits is final. To the contrary, this Court holds a decision abrogating immunity is a "final decision" for purposes of review even if it is technically interlocutory in nature. *Helstoski v. Meanor*, 442 U.S. 500, 507-8 (1979). The force behind this court's pragmatic approach to the finality rule is the desire of the Court to preserve for appeal issues of important federal concern. *Supreme Court Practice, supra*. § 3.4. *Cox, supra*, for instance, found an issue of

freedom of the press was ripe even though the damages trial had yet to be held. 420 U.S. 486.[1]

Here the *Guillen* tort appeal also represents such an important federal concern that is worthy of review and merits the Court's established practical approach to finality. The public interest at issue is highway safety. The importance of the funding sources and the necessity for candor in applying for such funds has been set forth in detail in the County's Petition and the *amicus curiae* briefs filed in this matter. Even a party to a separate tort action who has settled its case, Whitmer, has attempted[2] to file a brief in this matter underscoring the importance of the federal question. The *Guillen* tort action is the rare case where a state court has declared unconstitutional an act of Congress even in light of all other jurisdictions conceding its preemptive effect. 31 P.3d at 644. Most telling is that the state supreme court itself has invited review. *Id.* at 655.

While the decision of this Court in the PDA case will be dispositive of the discovery issue in the tort case, it is also true that the tort case *alone* would be eligible for review under to the cases interpreting the finality rule. Of concern in the decision in *Cox, supra*, was that if appeal were to abide the trial on the merits, petitioner might prevail on non-federal grounds and the important freedom of the press issue could not reach the Supreme Court. 420 U.S. at 484-6. The *Guillen*

[1] *See also, Pennsylvania v. Ritchie*, 480 U.S. 39 (1987) (preserving the right to exculpatory evidence); *North Dakota v. Snyder's Drug Stores, Inc.*, 414 U.S. 156 (1973) (concerning due process rights in a business licensure matter).

[2] Whitmers were parties to *Whitmer v. Pierce County* but not to this case of *Guillen v. Pierce County* and are not entitled to file documents under Rule 12.6, they admit their case was settled, dismissed and "moot," Whitmer Br. 10, and as a matter of law they have no "case or controversy" in which to have standing or for this court to decide. U.S. Const. Art. III, Sec. 2. Their brief should be stricken.

tort case presents the same problem. The facts of the accident are such that the County may well prevail at trial even if the privileged documents are admitted. In that event, and were the PDA case not subject to appeal, the decision of the Washington Supreme Court that 23 USC § 409 is unconstitutional would stand unchallenged to the detriment of the traveling public, the confusion of the many governments responsible for administering road programs and the undermining of numerous other similar federal privileges. See Louisiana Amicus Br. 14-16. The vital public interest can only be served by granting review of the final decision on the federal question which is separate and apart from any other proceedings in the case. *See, e.g., Mercantile National Bank v. Landeau*, 371 U.S. 555, 557-58 (1963)(interpretation of federal statute was "a separate and independent matter, anterior to the merits and not enmeshed in the factual and legal issues comprising the plaintiff's cause of action.") *See also Supreme Court Practice, supra.* § 3.8 (discussing collateral order rule and *citing United States v. McDonald*, 435 U.S. 850, 860 (1978)).

Finally, in support of the strong policy reason for accepting review, this Court should consider the County's earlier recitation of authorities that irreparable harm is inherent where a lower court has held a statute to be unconstitutional. *See* App. to Stay Mandate, 8-11. This principle is uncontroverted as respondents did not oppose the application for stay nor do they distinguish it now. Indeed, presumably such was one of the grounds for this Court's stay of the state court mandate. *See* 1/02/02 Order #01A452.

II. THIS CASE MERITS REVIEW

Respondents next claim *Guillen*'s holding—i.e. that §409 is unconstitutional and "only materials and data *originally created* for the statutory identified federal purposes are lawfully covered by the federal privilege," *see* 31 P.3d at 633

(emphasis added)—supposedly "does not conflict with the decisions of other courts of last resort." Br. In Opp. 12-14. Respondents however choose to consider only the supposed "three other state courts of last resort" that they claim "have considered the *1995* amendment *as it relates to public roads*." Br. In Opp. 12-14 (emphasis added). First, respondents fail to explain why a proper analysis would *exclude* both the numerous *contrary decisions* that *have* "considered the 1995 amendment as it relates to public roads" *at railroad crossings* or other locations,[3] *and* the majority of *contrary decisions* that even without need of the 1995 "clarification" amendment *already held* § 409 applied to preexisting data originally created for another purpose.[4] Second, *none* of even

[3] *See e.g. Palacios v. Louisiana and Delta Railroad*, 775 So.2d 698 (La.App. 2000)(accident history protected because "Congress' intrusion, in this instance, however, is constitutionally permissible . . .); *Coniker v. New York*, 181 Misc. 2d 801, 695 N.Y.S.2d 492, 495 (N.Y. Ct. Cl. 1999)("Congress has determined that the effect of the prohibition . . . outweighs the barriers that it creates for litigants attempting to prove that a state's negligence contributed to their injuries. . . . ."); *Gaubert v. Denton*, 1999 WL 350103 (E.D.La. May 28, 1999) *aff'd* 210 F.3d 368 (5th Cir. 2000)("[e]very court that has considered the privilege, both federal and state, has concluded that it serves the legitimate purpose of fostering the collection and evaluation of highway safety information free from the threat of future tort actions.")(*quoted in Palacios*, 775 So.2d at 701)); *Fry v. So. Pacific Trans. Co.*, 715 So.2d 632 (La. App. 1998)(accident report excluded because 1995 amendment "clarified that the list of exhibits to be excluded should also encompass accident reports. . . ."); *Mackie v. Grand Trunk Western R. Co.*, 544 N.W.2d 709, 711 (Mich. App. 1996)("a document that otherwise falls within the ambit of §409 must be considered inadmissible *even though it fulfills a state as well as a federal function.*")(emphasis added); *City of Atlanta v. Watson*, 267 Ga. 185, 475 S.E.2d 896, 903-4 (1996)("409 is applicable in state court" because "[t]o hold otherwise defeats a significant purpose of the federal act and cannot be justified in light of the supremacy clause.")

[4] *See e.g. Seaton v. Johnson*, 898 S.W.2d 232, 235-37 (Tenn. App. 1995)(before the 1995 amendment accident reports protected by the "clear weight of authority" under §409 because "all records *used or usable* in

respondent's three selected cases support *Guillen*'s holding and two are in direct conflict with it. *Walden v. Dept. of Transp.*, 27 P. 3d 297 (Alaska 2001) does not address the issue, respondents admit *Ex parte Alabama Dep't of Transp.*, 757 So. 2d 371 (Ala. 1999) actually holds "plaintiff was not entitled to obtain information regarding prior auto accidents" from the state entity that collected and compiled it—and did so by expressly holding contrary state law was preempted because otherwise it would stand "as an obstacle to the accomplishment of the full purposes and objectives of Congress," *id.* at 374, and *Reichert v. State*, 694 So.2d 193 (La. 1997), also found the statute applied to documents not created for federal purposes because in "1995 section 409 was amended . . . to effectively *eliminate the admissibility* of '*[a]ccident* reports, traffic counts, and *other raw data collected* by the Department.'"

Respondents next make an even stranger argument that *Guillen*—which explains its split from these universally contrary cases by holding "Congress' 1995 amendment to 23 U.S.C. § 409 violates the United States Constitution's federalist design," *see* 31 P.3d at 633—somehow "did not decide an important federal question." Br. In Opp. 15. Respondents remarkably go on to argue certiorari should *not* be granted and *Guillen not* reviewed because it *wrongly holds* the 1995 amendment applies to "raw data . . . collected as part

identifying, evaluating or planning safety of highway *or* rail-highway crossings pursuant to Sections 130, 144, and 152 are so immune to examination.")(emphasis added); *Lusby v. Union Pacific R.R. Co.*, 4 F.3d 639, 641 (8th Cir. 1993)(data from accident reports excluded because "*state materials* do *not* fall outside the scope of §409 merely because they *are not compiled solely for federal reporting purposes and are available for other uses.*")(emphasis added); *Robertson v. Union Pacific R. Co.*, 954 F.2d 1433, 1435 n. 3 (8th Cir. 1992)("[a]lthough such information [such as newspaper and traffic count] was *available for other uses and purposes*, the statute's mandatory language *requires exclusion* . . . .")(emphasis added).

of regular state requirements . . . ." Br. In Opp. 19. Ignoring both that the state court never claimed there were "regular state requirements" that *the County* "collect" such raw data and that Congress expressly stated the 1995 amendment was a "clarification" to ensure "*raw* data collected *prior* to being made part of any formal or bound report" was protected, Act of November 19, 1995, Pub. No. 104-59, 1995 U.S. C.C.A.N. (109 Stat.) 591, respondents nowhere explain how *Guillen*'s interpretation of a *federal* statute [5] is not a "*federal* question." This is especially so where the basis for its "interpretation" is its holding that the latest amendment is unconstitutional.

Respondents find *Guillan*'s striking constriction of Congress' constitutional powers so hard to defend that they would prefer that if certiorari was granted the Court "not address the constitutional issues." Br. In Opp. 19. However such assumes this Court would agree there is no need to vacate *Guillen*'s erroneous constitutional analysis or to affirm the constitutionality of a federal statute. Such also assumes this Court would agree with respondents and against *Guillen* that Congress did not really mean what it expressly said in the text and legislative history of § 409, would agree the numerous state and federal cases which unlike *Guillen* protect raw data are all wrong, and would agree to give § 409 an interpretation that *discourages*—rather than *encourages* as Congress intended—states and municipalities from participating in the federal hazard elimination program. If § 409 no longer constitutionally protects raw data as *Guillen* holds then Pierce

[5] As to its holding that the 1995 amendment *intended* to protect raw data, but only in *that* regard, *Guillen was* consistant with every court having decided the question. *See supra* notes 1 & 2. Though respondent asserts *Ex parte Alabama Dep't of Transp.* and *Irion v. State*, 760 So.2d 1120, (La. App. 2000) are at least *some* authority to the contrary, Br. In Opp. 17-18, the former instead *upheld* the exclusion of raw data while the latter simply held the raw data there had "not been collected or compiled by the State for the purpose of obtaining federal funds or to enforce safety" and was "acquired . . . *from a third party*, not DOTD."

County and other municipalities are in a far worse position in litigation by having their Public Works Department being a central location for *all* accident history from all law enforcement such as the unaffiliated State patrol—providing plaintiffs a "one stop shopping" for all their discovery needs—and in a position for plaintiffs to claim the government "knew" of the accident history because it "collected and compiled" it pursuant to federal law. Indeed, respondents surprisingly *agree* "the federal government has an interest" if "a party in a tort action is allowed to admit into evidence that the state was gathering information about a certain intersection," Br. In Opp. 25, and the record is uncontested such is *exactly* why respondents and others argued to the state court they wanted these documents. *See* P's Memo. In Supp. Of Mot. To Compel 14 ("Obviously, . . . plaintiffs are trying to establish that the County had notice of this hazardous condition and failed to make improvements."); Whitmer Br. at 4 (seeking "to prove that the County knew or should have known of the particular hazards.") *See also Alaska, et al.* Amicus Br. at 4-5.

Such "federal question[s]" are so important 13 states, municipalities from across the nation and the railroad industry all support the grant of certiorari. *See amici* briefs. Indeed, even the state court recognized "[i]f this state court has misconstrued the United States Constitution's limitations upon the federal government's power . . . the United States Supreme Court will so instruct . . . ." 31 P.3d at 655. The requirements of Rule 10 are clearly met.

Finally, respondents claim *Guillen* simply "followed relevant decisions of this Court." Br. In Opp. 20. However, respondents ignore such cited "decisions" as *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 155 (1989) ("[d]ocuments having been compiled once for [one] purpose . . . were not disqualified from being 'compiled' again later for a different purpose.") and *Tennesse Electric Power Co. v.*

Tennessee Valley Authority, 306 U.S. 118, 144 (1939) ("absent the states or their officers, [individuals] have no standing . . . to raise any question under the [tenth] amendment.") Similarly, respondents nowhere address the Court's statements that "federal 'direction' of *state judges* is mandated by *the text of the Supremacy Clause*," *New York v. United States*, 505 U.S. 144, 178-79 (1992) (emphasis added), and that Congress "may require *state courts* . . . 'to enforce federal prescriptions, insofar as those prescriptions relate[] to matters appropriate for the judicial power." *Alden v. Main*, 527 U.S. 706, 752 (1999); *Printz v. United States*, 521 U.S. 898, 935 (1997). To the extent respondents do discuss the issues of "federal interest" and the Spending, Commerce and Necessary and Proper Clauses, they merely repeat *Guillen's* attempted justifications that were addressed in the petition and *amici* briefs. Pet. 13-27; AAR *Amicus* Br. 11-19; *Louisiana Amicus* Br. 14-17; *Alaska et al Amicus* Br. 1-8.

Respectfully submitted,

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April 8, 2002

APPENDIX

APPENDIX

APPENDIX K

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

No. 98 2 06119 2

IGNACIO GUILLEN as Legal Guardian for JENNIFER GUILLEN and ALMA GUILLEN, minors; and MARIANO GUILLEN, as Legal Guardian for PAULINA GUILLEN and FATIMA GUILLEN,

Plaintiffs,

vs.

PIERCE COUNTY, a municipal corporation, and THE ESTATE OF CLEMENTINA GUILLEN-ALEJANDRE,

Defendants.

Plaintiffs' First Set Of Interrogatories And Request For Production Of Documents To Defendant Pierce County and Answers Thereto

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TO: DEFENDANT PIERCE COUNTY

AND TO: ITS ATTORNEY

DEFINITIONS AND PROCEDURES

A. Procedures: Plaintiffs propound the following interrogatories pursuant to CR 33, and you must file answers within thirty (30) days of service. Please complete the answers within the space provided and, if needed, add additional pages. Return the signed and verified original to this office. These interrogatories are continuing in nature. If

you discover information as this matter progresses then you are requested to supplement your responses to ensure that they are accurate at the time of trial and so that additional discovery can be conducted based upon your supplemented responses.

Plaintiffs are propounding the request for production of documents pursuant to Civil Rule 34 and requests that you provide a copy of the documents responsive to the requests within thirty days of receiving these requests to the offices of Gordon, Thomas, Honewell, Malanca, Peterson & Daheim, Suite 2200, Wells Fargo Plaza, Tacoma, Washington, 98402.

B. Scope of Answers: (1) Use of the pronoun "you" refers to Defendant Pierce County and it is intended that the answers include all information known to the persons to whom the interrogatories are directed, their attorneys and investigators; and (2) the term "intersection at issue" refers to the intersection at 168th Street East and B Street East that is the subject of this lawsuit.

C. Document: As used herein the word "document" shall mean the original and any copy, regardless of origin or location, of any letter, memorandum, hand-written or typed note, record, report, working paper, graph, chart, index, data sheet or data processing card, map, drawing, book, periodical, pamphlet, audio recordings, audio and video tapes, information stored on computer discs or hard drives; photograph or any other written, recorded or transcribed, punched, taped, filmed, photographic or graphic matter, however produced or reproduced, to which you have or have had access.

D. Supplemental Answers: These interrogatories and requests for production shall be deemed to be continuing, and in the event you discover further information that is responsive, you are required to supplement your answers and responses.

INTERROGATORY NO. 1: Identify each person providing information used to answer these interrogatories together with the specific interrogatory to which information was provided.

ANSWER:

Dan Hamilton: Interrogatory nos. 1-8;
Susan Jensen: Interrogatory nos. 1, 3-8;
Craig Adams: Interrogatory nos. 1, 5; and
Tom Ballard: Interrogatory nos. 1, 3-4, 6, 8-9.

INTERROGATORY NO. 2: For each expert witness that you intend to call at time of trial provide the following:

(a) Name, address, and field of expertise for each such expert;
(b) The subject matter on which the expert is expected to testify;
(c) State the substance of the facts and opinions to which the expert is expected to testify; and
(d) Provide a summary of the grounds for each such opinion.

ANSWER: Defendant Pierce County has yet to determine its experts and this interrogatory will be supplemented pursuant to the case schedule in this action.

INTERROGATORY NO. 3: Identify all employees, agents, or officials of defendant Pierce County who have knowledge of automobile accidents taking place at the intersection at issue for the time period January 1, 1990 through July 4, 1996. This interrogatory includes knowledge gained by first hand investigation, such as law enforcement officers investigating an accident, or knowledge gained indirectly such as reading reports or other documents. Please specify by each the name of each individual how they gained their knowledge, i.e., whether through first hand observance or by way of second-hand information.

ANSWER: Objection on the ground Interrogatory No. 3 is overbroad, unduly burdensome and violates the work-product privilege as well as 23 U.S.C. Sec. 409.

INTERROGATORY NO. 4: Identify all persons within Pierce County's knowledge who have been involved in automobile accidents at the intersection at issue for the time period of January 1, 1990 through July 5, 1996.

ANSWER: Objection; this interrogatory seeks information protected by 23 U.S.C. Sec. 409.

INTERROGATORY NO. 5: Identify all Pierce County Deputy Sheriffs who patroled the intersection at issue during the time frame of January 1, 1990 through July 4, 1996.

ANSWER: Objection; this interrogaory is unduly burdensome, overbroad and violates 23 U.S.C. Sec. 409.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1: Provide a copy of all 911 documents (including all tape recordings and computer stored information) or phone calls taken from a two block radius of the intersection at issue for the time frame of January 1, 1990 through July 4, 1996. If you are able to provide documents only pertaining to accidents involving at least one automobile at the intersection at issue for this request then simply provide only those documents. However, if you are unable to segregate such documents, then provide all documents as originally specified.

RESPONSE: Objection; this request for production of documents is vague, overbroad, unduly burdensome and requests information protected by 23 U.S.C. Sec. 409. Without waiving those objections, tape recordings made by the Law Enforcement Support Agency are erased after six months unless specifically requested to be retained and Pierce County is unaware of any such request for any accident at the intersection in question. Computerized Accident logs are

destroyed after one year, and no record would be kept of the intersection in question because accidents along that road are normally investigated by the Washington State Patrol.

INTERROGATORY NO. 6: For each automobile accident occurring at the intersection at issue for the time period January 1, 1990 through July 5, 1996, provide the following:

(a) Date of the accident;
(b) Identify all persons involved in the accident;
(c) Identify all fatalities at each such accident.

ANSWER: Objection; this interrogatory seeks information protected by 23 U.S.C. Sec. 409.

INTERROGATORY NO. 7: Do you contend that any person not a party to this lawsuit is responsible for the accident at issue? If yes, identify each such individual and provide the factual basis for your assertion that each such individual is also responsible for this accident.

ANSWER: Unknown; this interrogatory will be supplemented upon completion of discovery if such information is obtained.

INTERROGATORY NO. 8: Are you contending that the two stop signs that Pierce County had in place at the time of this accident at the intersection at issue was a reasonably prudent traffic control device for this intersection? If yes, provide all bases for such an assertion.

ANSWER: Yes; no other control as required under the standards of the industry and good traffic control practice.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2: Provide a copy of all documents reflecting all work done at the subject intersection for the time period of July 5, 1986 to July 4, 1996. This request includes, but is not limited to, all documents recording what work was done regarding all signage placed at the subject intersection, the dimensions of all signs, and the height all signs were placed.

RESPONSE: Objection to the extent this request seeks production of documents regarding accidents and evaluation of those accidents that are protected by 23 U.S.C. Sec. 409. Without waiving that objection, attached please find all maintenance records of the subject intersection in the County's possession from 1991 to July 1996. Records from 1986 to 1990 are no longer in the County's possession.

INTERROGATORY NO. 9: Specify the date Pierce County erected a four way stop at the intersection at issue and the date Pierce County erected a four way traffic light at the intersection at issue.

ANSWER: July 15, 1996 two additional stop signs were installed and on April 2, 1998 stop lights became operational.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3: Provide a copy of all documents recording communications Pierce County has had with any other entity (whether an individual, government agency or official, or other association or group) regarding the intersection at issue for the time period of January 1, 1990 through July 4 1996.

RESPONSE: See objection to Interrogatory No. 6.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4: Provide a copy of all photographs Pierce County has in its possession, control, or custody of accidents involving at least one automobile at the intersection at issue taken from January 1, 1990 through July 6, 1996.

RESPONSE: See objection to Interrogatory No. 6. The request also is outide the scope of discovery and seeks material privileged by the work-product privilege.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5: Provide a copy of all written statements (this includes statements written by the witness themselves and statements where anther person wrote what the witness stated and the witness signed the statement) by witness to accidents at the

intersection at issue that occurred during the time period January 1, 1990 through July 6, 1996.

RESPONSE: See objection to Request for Production No. 4.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6.: Provide a copy of all accident reports sent to Pierce County (whether directly or by way of another agency) from individuals who had been involved in automobile accidents at the intersection at issue from January 1, 1990 through July 4, 1996.

RESPONSE: See objection to Request for Production No. 4.

Dated this 8 day of April, 1998.

GORDON, THOMAS, HONEYWELL,
MALANCA, PETERSON & DAHEIM, P.L.L.C.

By /s/ Salvador A. Mungia
SALVADOR A. MUNGIA, WSBA No. 14807
Attorneys for Plaintiffs

Answers Submitted this _____ day of _____, 1999.

By: /s/ _____
Attorney for Pierce County

SIGNATURE

Deputy Prosecutor Daniel R. Hamilton, attorney for defendant Pierce County, states that the foregoing objections to interrogatory Nos. 3-6 are his.

DATED this 17th day of June, 1998.

/s/ Daniel R. Hamilton
DANIEL R. HAMILTON

STATE OF WASHINGTON)
ss:
County of Pierce)

DANIEL R. HAMILTON, being first duly sworn on oath, states as follows: That he is the attorney of record, and states that the answers to the foregoing Interrogatory Nos. 1, 2 and 7 are true to the best of his knowledge and belief.

/s/ Daniel R. Hamilton
DANIEL R. HAMILTON

SUBSCRIBED and SWORN to before me by Daniel R. Hamilton, this 17th day of June, 1998.

/s/ Marilyn P. Joval
(Type/Print Name) MARILYN P. JOYAL
NOTARY PUBLIC in and for the
State of Washington
Commission Expires: 06/13/01 .

STATE OF WASHINGTON)
ss:
County of Pierce)

TOM BALLARD being first duly sworn on oath, states as follows: That he is the County Engineer for Pierce County and states that the answers to the foregoing Interrogatory Nos. 3-4, 6, and 8-9 are true to the best of his knowledge and belief.

/s/ Tom Ballard
TOM BALLARD

SUBSCRIBED and SWORN to before me by Tom Ballard, this 17th day of June, 1998.

/s/ Don Hagen
(Type/Print Name) DON HAGEN
NOTARY PUBLIC in and for the
State of Washington
Commission Expires: 09/26/01 .